

EXHIBIT 4

Demurrer to Complaint

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17 EXECUTIVE TRUSTEE SERVICES, LLC dba ETS SERVICES, LLC
18 (erroneously sued as ETS SERVICES, LLC) and THE BANK OF NEW
19 YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA
20 THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR
21 TO JPMORGAN CHASE BANK N.A. AS TRUSTEE FOR RAAC 2006 SP3
22 (erroneously sued as THE BANK OF NEW YORK MELLON TRUST
23 COMPANY)

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **COUNTY OF LOS ANGELES — CENTRAL DISTRICT**

26 GENNANY TIKHONOV fbda G&M
27 MANAGEMENT LLC fbda WEST COAST
28 IMAGIN by: ALBINA TIKHONOV – a real
man/owner of title,

Plaintiffs,

vs.

ETS SERVICES LLC.; THE BANK OF NEW
YORK MELLON TRUST COMPANY, DOES
1 TO 10, INCLUSIVE,

Defendants.

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

AUG 13 2012

John A. Clarke, Executive Officer/Clerk

By  Deputy
MOSES SOTO

Case No. BC487215
Assigned for All Purposes to:
Hon. Steven J. Kleifield
Dept. 53

**DEFENDANTS' DEMURRER TO
PLAINTIFFS' "FIRST AMENDED
VERIFIED COMPLAINT FOR
UNLAWFUL DETAINER AND DAMAGES
AND FOR INJUNCTIVE RELIEF"**

Filed concurrently with Request For Judicial
Notice

Date: October 19, 2012
Time: 8:30 a.m.
Crtrm.: 53

Action Filed: June 26, 2012

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on October 19, 2012 at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Dept. 53 of the above-entitled Court, located at located at 111 North Hill St.,
4 Los Angeles, CA 90012, a hearing will be held on the Defendants Executive Trustee Services, LLC
5 dba ETS Services, LLC (erroneously sued as ETS Services, LLC) and The Bank Of New York Mellon
6 Trust Company, National Association fka The Bank Of New York Trust Company, N.A. as Successor
7 to JP Morgan Chase Bank N.A. as Trustee for RAAC 2006 SP3 (erroneously sued as The Bank Of
8 New York Mellon Trust Company) (collectively "Defendants") Demurrer to Plaintiff Albina
9 Tikhonov's ("Plaintiff") first amended complaint.

10 This Demurrer is made on the grounds that each cause of action fails to state facts sufficient to
11 constitute a cause of action against Defendants pursuant to Code of Civil Procedure § 430.10(e), and is
12 uncertain pursuant to Code of Civil Procedure § 430.10(f). The Demurrer is also made on the ground
13 that Plaintiffs Gennany Tikhonov, G&M Management, West Coast Imagin were removed from the
14 first amended complaint caption without dismissing the case. The Demurrer is further made on the
15 ground that the first amended complaint causes of action seek relief that improperly exceeds the
16 jurisdiction of the unlawful detainer proceedings.

17 The Demurrer is based on this Notice, the Demurrer, Memorandum of Points and Authorities,
18 the concurrently filed Request for Judicial Notice, as well as the First Amended Complaint and all
19 other papers on file in this action.

1 DATED: August 13, 2012

SEVERSON & WERSON
A Professional Corporation

By: 

Benjamin A. Eilenberg

Attorneys for Defendants EXECUTIVE TRUSTEE
SERVICES, LLC dba ETS SERVICES, LLC (erroneously
sued as ETS SERVICES, LLC) and THE BANK OF
NEW YORK MELLON TRUST COMPANY,
NATIONAL ASSOCIATION FKA THE BANK OF
NEW YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JPMORGAN CHASE BANK N.A. AS
TRUSTEE FOR RAAC 2006 SP3 (erroneously sued as
THE BANK OF NEW YORK MELLON TRUST
COMPANY)

1 **DEMURRER TO COMPLAINT**

2 Defendants Executive Trustee Services, LLC dba ETS Services, LLC (erroneously sued as
3 ETS Services, LLC) and The Bank Of New York Mellon Trust Company, National Association fka
4 The Bank Of New York Trust Company, N.A. as Successor to JP Morgan Chase Bank N.A. as
5 Trustee for RAAC 2006 SP3 (erroneously sued as The Bank Of New York Mellon Trust Company)
6 (collectively "Defendants") demur to the Plaintiff Albina Tikhonov's ("Plaintiff's") first amended
7 complaint on the following grounds:

8 1. Plaintiff's first cause of action To Set Aside Pending Trustee's Sale By A Bank Other
9 Than Defendant JP Morgan Chase fails to state facts sufficient to constitute a cause of action against
10 Defendants. (Code Civ. Proc. § 430.10(e).)

11 2. Plaintiff's second cause of action To Cancel Trustee's Deed fails to state facts
12 sufficient to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

13 3. Plaintiff's third cause of action for Quiet Title fails to state facts sufficient to constitute
14 a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

15 4. Plaintiff's fourth cause of action titled Demand For An Accounting fails to state facts
16 sufficient to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

17 5. Plaintiff's fifth cause of action for Slander of Title fails to state facts sufficient to
18 constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

19 6. Plaintiff's sixth cause of action for Fraud fails to state facts sufficient to constitute a
20 cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

21 7. Plaintiff's seventh cause of action To Void Contract Based On Impossibility Of
22 Performance (Cal. Civ. Code §§ 1411, 1511, 1595 et. seq. fails to state facts sufficient to constitute a
23 cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

24 8. Plaintiff's eighth cause of action to To Void Contract Based On Unconscionableness
25 (Cal. Civ. Code § 1670.5(A))" fails to state facts sufficient to constitute a cause of action against
26 Defendants. (Code Civ. Proc. § 430.10(e).)

1 9. Plaintiff's ninth cause of action for Breach of Implied Covenant of Good Faith And
2 Fair Dealing fails to state facts sufficient to constitute a cause of action against Defendants. (Code
3 Civ. Proc. § 430.10(e).)

4 10. Plaintiff's tenth cause of action for Violation of Cal. Civil Code §§ 1920 and 1921 fails
5 to state facts sufficient to constitute a cause of action against Defendants. (Code Civ. Proc.
6 § 430.10(e).)

7 11. Plaintiff's eleventh cause of action for Violation of Cal. Civil Code § 1916.7 fails to
8 state facts sufficient to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

9 12. Plaintiff's twelfth cause of action for Rescission/Cancellation fails to state facts
10 sufficient to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

11 13. Plaintiff's thirteenth cause of action for Violation of Cal. Business & Professions Code
12 § 17200 et seq fails to state facts sufficient to constitute a cause of action against Defendants. (Code
13 Civ. Proc. § 430.10(e).)

14 14. Plaintiff's fourteenth cause of action for Breach of Fiduciary Duty fails to state facts
15 sufficient to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

16 15. Plaintiff's fifteenth cause of action for Violation of Welfare and Institutions Code
17 15600 et seq (Elder Abuse) fails to state facts sufficient to constitute a cause of action against
18 Defendants. (Code Civ. Proc. § 430.10(e).)

19 16. Plaintiff's sixteenth cause of action for Conspiracy fails to state facts sufficient to
20 constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

21 17. Plaintiff's seventeenth cause of action for Intentional Infliction of Emotional Distress
22 fails to state facts sufficient to constitute a cause of action against Defendants. (Code Civ. Proc.
23 § 430.10(e).)

24 18. Plaintiff's eighteenth cause of action for Injunction Relief fails to state facts sufficient
25 to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

26 19. Plaintiff's nineteenth cause of action for Declaratory Relief fails to state facts sufficient
27 to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)
28

1 20. Plaintiff's twentieth cause of action for Violation of Cal. Civ. Code § 1632 fails to state
2 facts sufficient to constitute a cause of action against Defendants. (Code Civ. Proc. § 430.10(e).)

3 21. Plaintiff's entire first amended complaint fails because it exceeds the jurisdiction of the
4 Court in determining unlawful detainer proceedings.

5 22. Plaintiff's first amended complaint is filed in an unlawful detainer action, but it fails
6 because Defendants are not in possession of the property.

7 23. Plaintiff's entire first amended complaint fails because it is uncertain, ambiguous, and
8 unintelligible. (Code Civ. Proc. § 430.10(f).)

9
10 DATED: August 13, 2012

SEVERSON & WERSON
A Professional Corporation

11
12
13 By:


Benjamin A. Eilenberg

14
15 Attorneys for Defendants EXECUTIVE TRUSTEE
16 SERVICES, LLC dba ETS SERVICES, LLC (erroneously
17 sued as ETS SERVICES, LLC) and THE BANK OF
18 NEW YORK MELLON TRUST COMPANY,
19 NATIONAL ASSOCIATION FKA THE BANK OF
20 NEW YORK TRUST COMPANY, N.A. AS
21 SUCCESSOR TO JPMORGAN CHASE BANK N.A. AS
22 TRUSTEE FOR RAAC 2006 SP3 (erroneously sued as
23 THE BANK OF NEW YORK MELLON TRUST
24 COMPANY)
25
26
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1 **I. INTRODUCTION**

2 Plaintiff Albina Tikonov ("Plaintiff") acquired an junior interest in the property at issue at a
3 trustee sale of a third deed of trust that is secured against the property. The third deed of trust and the
4 interest Plaintiff obtained was and is subject to two senior deeds of trust secured against the property
5 for which Bank of New York Mellon is the beneficiary. Plaintiffs Gennany Tikhonov, G&M
6 Management, West Coast Imagin, and Albina Tikhonov filed the original complaint in this "unlawful
7 detainer" action against Executive Trustee Services and Bank of New York Mellon. Executive
8 Trustee Services and Bank of New York Mellon demurred to the original complaint because they were
9 not in possession of the property.

10 Plaintiff Albina Tikhonov filed a first amended complaint ("FAC") that apparently omits
11 Gennany Tikhonov, G&M Management, and West Coast Imagin as parties, and adds several
12 defendants without leave of court. Moreover, Plaintiff now asserts twenty causes of action for various
13 damages and injunctive relief, which is improper in this "unlawful detainer" action. Notably, the crux
14 of the first amended complaint remains the same, Plaintiff seeks to strip Bank of New York's superior
15 liens on the property through this action.

16 To the extent the convoluted and ambiguous FAC can be understood, it is based on incorrect
17 internet propagated theories including "produce the note" and that MERS cannot do business in
18 California. Also, the crux of Plaintiff's FAC is predicated upon a misunderstanding of lien priorities.
19 Plaintiff is apparently under the misperception that the foreclosure of the third priority lien somehow
20 extinguished BONY's two senior liens, which it did not. As stated below, each of the FAC claims fails
21 as a matter of law as does her central FAC contention.

22 **II. STATEMENT OF FACTS**

23 **A. Leonid Ovsoich Takes Out Four Loans On The Property**

24 In May 2004 Leonid Ovsoich purchased real property located at 14713 Valleyheart Drive,
25 Sherman Oaks, CA 91403. (Request for Judicial Notice ("RJN"), Exhibit ("Ex.") 1, Grant Deed.)

26 Deed of Trust #1: Ovsoich refinanced the property in April 2006 with a first deed of trust for
27 \$999,999 (RJN, Ex. 2, Deed of Trust #1.)
28

1 Deed of Trust #2: Simultaneously, Ovsovich also obtained an \$85,000 loan secured against
2 the property by a second deed of trust. (RJN, Ex. 3, Deed of Trust #2.) Both the first and second deed
3 of trust secured the mortgage loans Ovsovich obtained from MetroCities and both mortgage loans are
4 serviced by GMAC Mortgage, LLC.

5 Deed of Trust #3: In November 2006, Ovsovich obtained a \$25,000 loan from Reliant Group,
6 Inc. secured by a third deed of trust on the property. (RJN, Ex. 4, Deed of Trust #3.)

7 Deed of Trust #4: In January 2007, Ovsovich obtained an \$18,000 loan secured against the
8 property. (RJN, Ex. 5, Deed of Trust #4.)

9 **B. The THIRD Deed Of Trust Is Foreclosed Upon**

10 Foreclosure proceedings on the third deed of trust that secured the \$25,000 loan against the
11 property commenced on June 25, 2007. (RJN, Ex. 6, Notice of Default for Deed of Trust #3; RJN,
12 Ex.7, Notice of Trustee's Sale for Deed of Trust #3.) On December 10, 2007, the Akselrod Revocable
13 Family Trust (Akselrod") purchased the third priority deed of trust interest at a trustee's sale. (RJN,
14 Ex. 8, Trustee's Deed Upon Sale.) The trustee's deed upon sale reflecting the sale was recorded on
15 January 10, 2008. (RJN, Ex. 8, Trustee's Deed Upon Sale.) The interest acquired by Akselrod in
16 purchasing the third deed of trust interest in the property remained subject to the senior first and
17 second priority deeds of trust secured against the property.

18 **C. Plaintiff Acquires The Property Subject To The First And Second Deeds Of Trust**

19 On July 2, 2008, the Akselrod Revocable Family Trust conveyed its third priority lien interest
20 in the property to Plaintiff Albina Tikhonov. (RJN, Ex. 9, Grant Deed.) This transfer of the Akselrod
21 Revocable Family Trust's interest in the property was and is still subject to the interests of the senior
22 first and second deeds of trust. (RJN, Ex. 2, Deed of Trust #1; RJN, Ex. 3, Deed of Trust #2; RJN, Ex.
23 4, Deed of Trust #3; RJN, Ex. 9, Grant Deed.) The grant deed from Akselrod to Tikonov was
24 recorded on July 8, 2008. (RJN, Ex. 9, Grant Deed.)

25 **D. The FIRST Deed Of Trust Is Assigned To BONY**

26 On August 10, 2011, the first deed of trust was assigned to The Bank of New York Mellon
27 Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor
28 to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006 SP3. (RJN, Ex. 10, Assignment of Deed of

1 Trust.)

2 **E. The FIRST Deed Of Trust Goes Into Foreclosure**

3 Due to the borrower's failure to make the required payments on the first Deed of Trust, a
4 Notice of Default was recorded on August 26, 2011. (RJN, Ex. 11, Notice of Default.)

5 **F. Plaintiffs Delay Foreclosure By Filing Bankruptcy**

6 On May 11, 2011, Plaintiffs Gennany Tikhonov and Albina Tikhonov declared bankruptcy.
7 (RJN, Ex. 12, Chapter 13 Bankruptcy Petition.) In their bankruptcy filings, Plaintiffs Gennany
8 Tikhonov and Albina Tikhonov listed the property at issue as their primary residence. (RJN, Ex. 13,
9 Declaration of Gennady Tikhonov and Albina Tikhonov in Support of Motion in Individual Case For
10 Order Continuing The Automatic Stay.) On December 19, 2011, the Court granted relief from the
11 automatic stay for Defendant to foreclose against the property. (RJN, Ex. 14, Order Granting Relief
12 From Automatic Stay.) On January 3, 2012, Plaintiffs appealed the order. (RJN, Ex. 15, Notice of
13 Appeal.) The appeal has not yet been heard. **At this time, Plaintiffs Gennany Tikhonov and Albina**
14 **Tikhonov are still in possession of the Property.**

15 **G. Plaintiffs File And Dismiss The First Unlawful Detainer Matter**

16 Plaintiffs also filed a nearly identical unlawful detainer matter, Los Angeles County Superior
17 Court Case # BC474906, on December 8, 2011. (RJN, Ex. 16, 1st Unlawful Detainer Complaint.)
18 BONY filed a motion for judgment on the pleadings. After Plaintiffs refused to comply with
19 discovery, BONY was forced to file eight motions to compel. On March 6, 2012, Plaintiffs dismissed
20 the unlawful detainer before the hearings on the nine pending motions. (RJN, Ex. 17, Dismissal of 1st
21 Unlawful Detainer.)

22 **H. Plaintiffs File This Second Unlawful Detainer Matter**

23 On June 26, 2012, Plaintiffs Gennany Tikhonov, Albina Tikhonov, G&M Management, and
24 West Coast Imagin filed the instant lawsuit. The complaint sought an unlawful detainer judgment
25 against Defendants Executive Trustee Services ("ETS") and The Bank of New York Mellon
26 ("BONY"). Defendants ETS and BONY filed a demurrer to the complaint based on the fact that they
27 are not in possession of the Property. Plaintiff Albina Tikhonov then filed this FAC.
28

1 **III. PLAINTIFF TIKHONOV'S FAC IMPROPERLY OMITTS OTHER PLAINTIFFS**

2 An amended pleading supersedes the original. (*State Comp.Ins. Fund v. Sup. Ct. (Onvoi*
3 *Business Solutions, Inc.)* (2010) 184 Cal.App.4th 1124, 1130-1131.) In the original complaint, there
4 were four plaintiffs: (1) Gennany Tikhonov; (2) Albina Tikhonov; (3) G&M Management; and (4)
5 West Coast Imagin. (Compl.) The FAC only lists Albina Tikhonov as plaintiff.

6 If the other three plaintiffs are no longer a part of the proceedings, they must be dismissed. In
7 the alternative, if they remain parties to the proceeding, then the FAC should so reflect. Defendants
8 are entitled to know what plaintiffs are party to the lawsuit.

9 **IV. THE FAC EXCEEDS THE COURT'S UNLAWFUL DETAINER JURISDICTION**

10 Unlawful detainer matters are of limited scope. The only "triable" issue is the right to
11 possession and incidental damages resulting from the unlawful detention. (*Larson v. City & County of*
12 *San Francisco* (2011) 192 Cal.App.4th 1263, 1297; *Lincoln Place Tenants Ass'n v. City of Los*
13 *Angeles* (2007) 155 Cal.App.4th 425, 452.) Unlawful detainer actions may not adjudicate questions of
14 title. (*Drybread v. Chipain Chiropractic Corp.* (2007) 151 Cal.App.4th 1063, 1072; *High v.*
15 *Cavanaugh* (1962) 205 Cal.App.2d 495, 498-499.) Damages in unlawful detainer actions are limited
16 to those directly related to the unlawful detention, such as rent, taxes, and association dues. (Code of
17 Civ. Proc. §§ 1166, 1174; *Rosetto v. Barross* (2001) 90 Cal.App.4th Supp. 1, 6.)

18 The FAC lists twenty separate causes of action for damages, punitive damages, injunctive
19 relief, to quiet title, to void contracts, and to resolve title to the Property.¹ Each cause of action fails on
20 the merits, but the Court need not address those issues. All 20 FAC causes of action are outside the
21 Court's unlawful detainer jurisdiction and should be dismissed.

22 **V. THE UNLAWFUL DETAINER ACTION FAILS SINCE DEFENDANTS ARE NOT**
23 **IN POSSESSION OF THE PROPERTY**

24 It is undisputed that Plaintiff is in possession of the Property. (RJN, Ex. 12, Ch. 13

25 _____
26 ¹ Plaintiff still lists this as an unlawful detainer action as the FAC is titled "First Ameneded [sic]
27 Complaint For Unlawful Detainer And Damages And For Injunctive Relief And Demand For jury
28 Trial." She also includes paragraphs 36-37, which attempt to reiterate that this case remains an
unlawful detainer action.

1 Bankruptcy Petition; RJN, Ex. 13, Declaration of Gennady Tikhonov and Albina Tikhonov in Support
2 of Motion in Individual Case For Order Continuing The Automatic Stay; RJN, Ex. 14, Order Granting
3 Relief From Automatic Stay; RJN, Ex. 15, Notice of Appeal.) Plaintiff also lists the Property as their
4 mailing address in this action. (See Compl. caption & FAC caption.) The case is thus moot because
5 Plaintiff cannot establish that Defendants have possession of the Property.

6 **VI. BONY HAS TWO SENIOR LIENS SECURED AGAINST THE PROPERTY**

7 Even if the Court decides to adjudicate Plaintiff's title claim, the undisputed, judicially
8 noticeable facts show that BONY has two superior liens secured against the property. "Other things
9 being equal, different liens upon the same property have priority according to the time of their
10 creation." (Civ. Code § 2897.) When a junior lien forecloses on a property, the junior lien takes
11 subject to the senior liens. (*Sichler v. Look* (1892) 93 Cal. 600, 609-610.)

12 Defendant's deeds of trust were recorded in April 2005. (RJN, Ex. 2, Deed of Trust #1; RJN,
13 Ex. 3, Deed of Trust #2.) Plaintiff's interest was acquired through foreclosure of a junior third deed of
14 trust. The third deed of trust was recorded in November 2006, well over a year after Defendants' deeds
15 of trust were recorded. (RJN, Ex. 4, Deed of Trust #3; RJN, Ex. 6, Notice of Default for Deed of Trust
16 #3; RJN, Ex. 7, Notice of Trustee's Sale for Deed of Trust #3; RJN, Ex. 8, Trustee's Deed Upon Sale.)
17 Plaintiff does not show that Defendant's deeds of trust were ever satisfied or repaid and title records
18 show the deeds of trust are still secured against the Property. Plaintiff's interest in the Property is
19 therefore still subject to Defendant's first and second priority deeds of trust.

20 **VII. THERE IS NO REQUIREMENT TO "PRODUCE THE NOTE"**

21 Plaintiff claims that BONY is required to produce the original note to have authority to
22 foreclose. (FAC, ¶¶ 18-21.) There is no such requirement. Raised in many recent actions by
23 borrowers seeking to delay and undo foreclosure, the claim has been uniformly rejected. (*Debrunner*
24 *v. Deutsche Bank National Trust* (2012) 2012 WL 883128 *4 (citations omitted) ("We likewise see
25 nothing in the applicable statutes that precludes foreclosure when the foreclosing party does not
26 possess the original promissory note.") Plaintiff's "produce the note" theory fails as a matter of law.
27
28

**VIII. MERS AND BONY ARE AUTHORIZED TO CONDUCT NONJUDICIAL
FORECLOSURES IN CALIFORNIA**

Plaintiff claims that Defendants cannot foreclose because they are not licensed to conduct business in California. (FAC, ¶¶ 25-34.) Defendants have all of the necessary licenses. However, even if they did not, Plaintiff's argument fails.

Nonjudicial foreclosure is not considered "intrastate business" in California within the meaning of Corporations Code § 2105(a). (See Corp. Code § 2105(a); *Sulak v. Mortg. Elec. Registration Sys., Inc.* (Cal. Ct. App. Dec. 7, 2006) 2006 WL 3514873, at *7-*9; *Benham v. Aurora Loan Serv.* (N.D. Cal. 2009) 2009 WL 2880232, at *4.) Corporations Code § 191(c)(7) specifically provides that "[c]reating evidences of debt or mortgages, liens or security interests on real or personal property" does not constitute transacting intrastate business. Also, § 191(d)(3) adds that the "enforcement of any loans by trustee's sale, judicial process or deed in lieu of foreclosure or otherwise" is also an exempted activity. Defendants therefore do not need to be licensed by the state to conduct a foreclosure of the Property.

IX. NO TRUSTEE SALE HAS OCCURRED AT THIS TIME

Plaintiff's causes of action "To Set Aside Pending Trustee's Sale" [1st COA] and "To Cancel Trustee's Deed" [2nd COA] are moot because there has not been a Trustee's Sale nor has one even been noticed yet.

Plaintiff attaches the bankruptcy notice in the *In re: Residential Capital, LLC, et al.*, matter (SDNY Bankruptcy Petition #12-12020) as FAC, Ex. E as purported evidence of a pending sale. She misreads the document. GMAC (a subsidiary of Residential Capital, LLC), is the servicer on the loan for BONY. This is why Plaintiff received the notice, not because there is a pending sale.

Although a notice of default was recorded on August 26, 2011, no Notice of Trustee's Sale has been recorded and Plaintiff does not provide any facts or evidence that any trustee's sale date is pending. Simply put, Plaintiff's claims seeking to prevent or set aside a foreclosure sale are premature and therefore moot.

1 **X. PLAINTIFF CANNOT QUIET TITLE BECAUSE BONY HAS TWO SENIOR LIENS**
2 **AND BECAUSE PLAINTIFF HAS NOT PAID OFF THOSE LIENS**

3 Plaintiff's Quiet Title [3rd COA] and Slander of Title [5th COA] claims fail for three primary
4 reasons. First, as stated above, BONY has two senior liens secured against the Property. Plaintiff's
5 FAC simultaneously contests those senior liens and admits that they exist by her allegations that she
6 sought to refinance the loan. (FAC, ¶¶ 884, 91-94, 98, 104, 111-113, 147-159.) BONY is entitled to
7 foreclose on its senior deeds of trust because of the default on loan repayment obligations of the
8 underlying loans.

9 Second, Plaintiff must pay the senior liens to remove them from the Property. Plaintiff took
10 the Property subject to the senior liens. (*Sichler v. Look* (1892) 93 Cal. 600, 609-610.) To extinguish
11 the senior liens on the Property, Plaintiff must pay them off.

12 Third, the slander of title claim fails because the recording of a notice of default is privileged.
13 California Civil Code § 2924(d)(1) provides that "[t]he mailing, publication, and delivery of notices as
14 required by this section" "constitute privileged communications pursuant to Section 47." Because the
15 recordation of the notice of default is required by Civil Code § 2924(a)(1) and (3), the recordation of
16 the notice is privileged conduct under Civil Code § 47.

17 To the extent Plaintiff seeks to forestall the foreclosure, her rights as a junior lienholder are
18 codified under Civil Code § 2924c. Civil Code § (a)(1) allows Plaintiff to delay foreclosure by
19 reinstating the loan (i.e., paying the amount due under the senior liens.) Plaintiff has not brought the
20 senior liens current and therefore cannot forestall foreclosure without doing so.

21 **XI. THERE IS NO RIGHT TO AN ACCOUNTING**

22 An accounting claim is equitable in nature and may be brought to compel the defendant to
23 account to the plaintiff for money: (1) where a fiduciary duty exists; and (2) the accounts evidencing
24 the balance due from the defendant to the plaintiff are so complicated that an ordinary legal action
25 demanding a fixed sum is impractical. (*See* 5 Witkin, Cal. Procedure, Pleading (4th ed. 1997) § 819,
26 p. 236.) Plaintiff cannot satisfy these requirements.

27 First, Defendants do not owe Plaintiff a fiduciary duty. A fiduciary relationship is a "relation
28 existing between two parties to a transaction wherein one of the parties to a transaction is in duty

1 bound to act with the utmost good faith for the benefit of the other party.” (*Herbert v. Lankershim*
2 (1937) 9 Cal.2d 409, 483.) This special relationship “ordinarily arises where a confidence is reposed
3 by one person in the integrity of another, and in such a relation the party in whom the confidence is
4 reposed, if he [or she] voluntarily accepts or assumes to accept the confidence, can take no advantage
5 from his [or her] acts relating to the interest of the other party without the latter’s knowledge or
6 consent” (*See id.*; *see also Barbara A. v. John G.* (1983) 145 Cal.App.3d 369, 382.)

7 California courts have consistently refused to extend the “‘special relationship’ doctrine to
8 include ordinary commercial contractual relationships ...” or to debtor-creditor relationships in
9 particular. “The relationship between a lending institution and its borrower-client is not fiduciary in
10 nature.” (*See Nymark v. Heart Fed. Sav. & Loan Ass’n* (1991) 231 Cal.App.3d 1089, 1093 n.1.)
11 “[B]etween a bank and its loan customers” there is no fiduciary relationship. (*See Price v. Wells*
12 *Fargo Bank* (1989) 213 Cal.App.3d 465, 476; *see also Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th
13 974, 981 (same).) “A debt is not a trust and there is not a fiduciary duty relation between debtor and
14 creditor as such.” In this case, the relationship is even more tenuous because Plaintiff is not a party to
15 BONY’s loans, but merely has a junior lien interest in the Property subject to BONY’s liens.
16 Defendants have no relationship with Plaintiff, and thus do not owe Plaintiff any duty, much less a
17 fiduciary duty.

18 Further, “[a] cause of action for an accounting requires a showing that a relationship exists
19 between the plaintiff and defendant that requires an accounting, and that some balance is due the
20 plaintiff that can only be ascertained by an accounting.” (*Teselle v. McLoughlin* (2009) 173
21 Cal.App.4th 156, 179.) Here, Defendants have no relationship with Plaintiff that requires an
22 accounting. Hence, no accounting is required.

23 **XII. PLAINTIFF’S FRAUD CLAIMS FAIL BECAUSE NEITHER SHE NOR**
24 **DEFENDANTS WERE INVOLVED IN THE LOAN ORIGINATION**

25 Plaintiff’s fraud claim [6th COA] request to void the contract based on impossibility of
26 performance [7th COA], request to void the contract “based on unconscionable” [8th COA] and
27 rescission/cancellation [12th COA] are based on purported fraud during loan origination and/or
28 attempts to modify the loan. Claims regarding loan origination are nonsensical since neither Plaintiff

1 nor Defendants were the original parties to the loan at issue. (RJN, Ex. 2.)

2 If Plaintiff is asserting some other form of fraud claim based on issues with loan modification,
3 it must be pled with particularity. The elements of fraud are: (a) misrepresentation (false
4 representation, concealment, or nondisclosure); (b) knowledge of the statement's falsity (scienter);
5 (c) intent to defraud (i.e., to induce action in reliance on the misrepresentation); (d) justifiable reliance;
6 and (e) resulting damage. (See *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; *Buckland v.*
7 *Threshold Enters., Ltd.* (2007) 155 Cal.App.4th 798, 806-07.) The elements of a negligent
8 misrepresentation claim are similar to a fraud cause of action, supra, except for the requirement of
9 scienter. Specifically, in a claim for negligent misrepresentation, the plaintiff need not allege the
10 defendant made an intentionally false statement, but simply one as to which he or she lacked any
11 reasonable ground for believing the statement to be true. (See *Charnay v. Cobert* (2006) 145
12 Cal.App.4th 170, 184.)

13 Under well-established California law, "general pleading of the legal conclusion of fraud is
14 insufficient." (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331.)
15 Instead, "every element of the cause of action for fraud must be alleged in full, factually and
16 specifically, and the policy of liberal construction of pleading will not usually be invoked to sustain a
17 pleading that is defective in any material respect." (*Ibid.*) "The requirement of specificity in a fraud
18 action against a corporation requires the plaintiff to allege the names of the persons who made the
19 allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or
20 wrote, and when it was said or written." (*Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2
21 Cal.App.4th 153, 157.) The specificity requirement applies equally to claims for negligent
22 misrepresentation. (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 185 fn. 14 ("Fraud and negligent
23 misrepresentation must be pleaded with particularity and by facts that show how, when, where, to
24 whom, and by what means the representations were tendered."); see also *Cadlo v. Owens-Illinois, Inc.*
25 (2004) 125 Cal.App.4th 513, 519.)

26 Plaintiff alleges that Defendants made negligent misrepresentations regarding income with
27 relation to applying for a loan. (FAC, ¶¶ 78-99.) But, Plaintiff fails to identify to whom she spoke,
28 that person's authority to speak, what was said, and when it was said. (*Tarmann v. State Farm Mut.*

1 *Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) Her misrepresentation claim thus fails.

2 **XIII. PLAINTIFF DOES NOT ALLEGE A CONTRACT WITH DEFENDANTS**

3 Plaintiff's Breach of the Implied Covenant of Good Faith and Fair Dealing claim [9th COA]
4 fails because she does not identify any contract between her and Defendants. When pleading a
5 contract based action, the contract at issue must be attached to the complaint or the terms must be set
6 forth verbatim in the body of the complaint. (*Otworth v. Southern Pacific Transportation Company*
7 (1985) 166 Cal.App.3d 452, 459; *Twaite v. Allstate Insurance Company* (1989) 216 Cal.App.3d 239,
8 252.) Plaintiff has not attached the contract or set forth the contract terms.

9 Even assuming Plaintiff was able plead a contract between the parties, which she cannot,
10 BONY's Deeds of Trust explicitly allows Defendants to foreclose on the Property when the borrower
11 defaults on the required loan payments. Moreover, "[i]t is universally recognized [that] the scope of
12 conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms
13 of the contract." (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2
14 Cal.4th 342, 373.) The implied covenant "cannot impose substantive duties or limits on the
15 contracting parties beyond those incorporated in the specific terms of their agreement." (*Agosta v.*
16 *Astor* (2004) 120 Cal.App.4th 596, 607; accord: *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 349-
17 50.) In particular, the implied covenant cannot be stretched to prohibit a party from doing that which
18 the agreement expressly permits. (*Carma Developers (Cal.), Inc., supra*, 2 Cal.4th at 374-75.

19 Here, BONY's first priority lien Deed of Trust expressly permits the beneficiary or trustee to
20 commence non-judicial foreclosure proceedings upon the borrower's default. (RJN, Ex. 2., Deed of
21 Trust ¶ 22.) Plaintiff does not deny that the loan was in default. The Deed of Trust expressly
22 authorized Defendants to commence foreclosure proceedings against the Property. The implied
23 covenant of good faith imposed no duty on Defendants to forbear from exercising this remedy that the
24 deed of trust expressly granted to them upon default. (*Price v. Wells Fargo Bank* (1989) 213
25 Cal.App.3d 465, 479.)

26 **XIV. PLAINTIFF DOES NOT ALLEGE ANY CIV. CODE §§ 1920, 1921, OR 1916.7**

27 **VIOLATIONS**

28 Beyond boilerplate allegations, Plaintiffs' tenth and eleventh causes of action provide no

1 substantive facts to suggest any actions by Defendants that violate Civil Code §§ 1920, 1921, or
2 1916.7. Also, the Loan was originated in April 2006. (RJN, Ex. 2.) Code of Civ. Proc. § 338(d)
3 imposes a three-year statute of limitations on an “action upon a liability created by statute, other than a
4 penalty or forfeiture.” (Code of Civ. Proc. § 338(a).) Plaintiff did not file this action until more than
5 six years after the Loan origination. The alleged statutory violations are thus barred by the three-year
6 statute of limitations pursuant to Code of Civ. Proc. § 338(d).

7 **XV. PLAINTIFF DOES NOT ALLEGE ANY A SECTION 17200 CAUSE OF ACTION**

8 Business & Professions Code § 17200, *et seq.* defines unfair competition as including “any
9 unlawful, unfair or fraudulent business act or practice.” (*Cel-Tech Communications, Inc. v. Los*
10 *Angeles Cellular Telephone Company* (1999) 20 Cal.4th 163, 175.) Plaintiff cannot fulfill any of these
11 required prongs.

12 **A. Plaintiff Has Not Alleged Unlawful Conduct**

13 Section 17200 requires an underlying violation of a law if the claim is asserted under the
14 unlawful prong. (*Krantz v. BT Visual Images, L.L.C.* (2001) 89 Cal.App.4th 164, 178.) As stated
15 throughout this demurrer, Plaintiff’s statutory claims all fail as a matter of law.

16 **B. Plaintiff Has Not Alleged Fraudulent Conduct**

17 The term “fraudulent,” as used in the UCL, “does not refer to the common law tort of fraud but
18 only requires a showing that members of the public ‘are likely to be deceived.’” (*Saunders v. Superior*
19 *Court* (1994) 27 Cal.App.4th 832, 839; *Byars v. SCME Mortgage Bankers, Inc.* (2003) 109
20 Cal.App.4th 1134, 1147.) Plaintiff cannot meet this standard on its face since Plaintiff’s fraud claims
21 fail as a matter of law as articulated above.

22 Furthermore, the FAC allegations are particular to the Property and loans secured against the
23 Property. These allegations have nothing to do whatsoever with the public at large. Plaintiff therefore
24 has not pled fraudulent conduct under Section 17200.

25 **C. Plaintiff Has Not Alleged Unfair Conduct**

26 A business practice is considered “unfair” if it threatens to violate or violates the policy or
27 spirit of an anti-trust law or otherwise significantly threatens or harms competition. (*Cel-Tech*
28 *Communications, Inc. v. Los Angeles Cellular Telephone Company* (1999) 20 Cal.4th 163, 187.)

1 “[A]ny finding of unfairness to competitors under section 17200 [must] be tethered to some
2 legislatively declared policy or proof of some actual or threatened impact on competition. We thus
3 adopt the following test: When a plaintiff who claims to have suffered injury from a direct competitor’s
4 “unfair” act or practice invokes Section 17200, the word “unfair” in that section means conduct that
5 threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws
6 because its effects are comparable to or the same as a violation of the law, or otherwise significantly
7 threatens or harms competition.” (*Id.* at 186-187.)

8 Plaintiff fails to plead any facts regarding public policy or threats to the public. Instead,
9 Plaintiff merely claims that Defendants somehow acted unfairly towards her. As stated throughout this
10 demurrer, even those allegations fail as a matter of law.

11 **XVI. DEFENDANTS DO NOT OWE PLAINTIFF A FIDUCIARY DUTY**

12 Plaintiff’s breach of fiduciary duty claim [14th COA] fails because there is no fiduciary duty
13 between Plaintiff and Defendants. “The relationship between a lending institution and its borrower-
14 client is not fiduciary in nature.” (*See Nymark v. Heart Fed. Sav. & Loan Ass’n* (1991) 231
15 Cal.App.3d 1089, 1093 n.1.) “[B]etween a bank and its loan customers” there is no fiduciary
16 relationship. (*See Price v. Wells Fargo Bank* (1989) 213 Cal.App.3d 465, 476; *see also Kim v.*
17 *Sumitomo Bank* (1993) 17 Cal.App.4th 974, 981 (same).) “A debt is not a trust and there is not a
18 fiduciary duty relation between debtor and creditor as such.” In this case, the relationship is even more
19 tenuous because Plaintiff was not a direct customer of the bank or party to BONY’s loans, but instead
20 purchased an third priority junior lien interest in the Property subject to BONY’s two senior liens.
21 Defendants have no relationship with Plaintiff and owe her no duty, much less any fiduciary duty.

22 **XVII. PLAINTIFF DOES NOT PLEAD ANY ELDER ABUSE**

23 Plaintiff’s elder abuse claim [15th COA] claims Defendants engaged in financial elder abuse.

24 Plaintiff appears to be attempting to assert an elder abuse claim based on loan origination.
25 (FAC, ¶¶ 143-155.) As discussed above, Plaintiff was not involved in the origination of the loan.
26 (RJN, Ex. 2.) Plaintiff appears to allege that she has standing to assert the loan origination claims
27 based on Leonid Ovsovich’s loan origination. (FAC, ¶ 143.) She presents no factual or legal authority
28 for such a proposition. Also, any loan origination claim is time barred. A claim for financial elder

1 abuse is subject to a four year statute of limitations. (Welf. & Inst. Code § 15657.7.) The loan was
2 originated in May 2006. (RJN, Ex. 2.) Plaintiff did not file this lawsuit until June 26, 2012.

3 Plaintiff's other purported elder abuse claim is based on the initiation of foreclosure
4 proceedings against the Property. (FAC, ¶¶ 156-157.) In order to state a claim for financial elder
5 abuse based on "assisting" in the taking of property from an elder, Plaintiff must allege that the taking
6 was accomplished for either a wrongful use or with the intent to defraud. Welf. & Inst. Code §
7 15610.30(a)(2). Taking property for a "wrongful use" means the person taking the property knew or
8 should have known this conduct is likely to be harmful to the elder. Welf. & Inst. Code § 15610.30(b)
9 (emphasis added). Foreclosing on the Property does not constitute a "wrongful use".

10 In *Stebley v. Litton Loan Servicing, LLP, et al.* (2011) 202 Cal. App. 4th 522, the plaintiff
11 argued that foreclosing was also a violation of the EADCPA. The Court held that there was no viable
12 cause of action, explaining that a plaintiff "must allege at least a 'wrongful use' of property. As [the
13 Court] held in an analogous case, 'It is simply not tortuous for a commercial lender to lend money,
14 take collateral, or to foreclose on collateral when a debt is not paid.... [A] commercial lender is
15 privileged to pursue its own economic interests and may properly assert its contractual rights.'" (*Id.*)
16 Here, Plaintiff concedes that the same basic facts are presented: Ovsovich was lent money, collateral
17 was taken, and the foreclosure proceedings were initiated when the borrower defaulted on the loan
18 repayment obligations. Plaintiff cannot therefore allege any "wrongful use" of the property.

19 Finally, Plaintiff's elder abuse claim is not pled with particularity. The pleading standard for
20 stating a financial elder abuse claim is high. A claim under the Elder Abuse Act must be alleged with
21 particularity. (*Hougue v. City of Holtville* (S.D. Cal. 2008) 2008 WL 1925249 at *6 (citing *Delaney v.*
22 *Baker* (1999) 20 Cal.4th 23.)) The enhanced remedies under the Act are available only for "acts of
23 egregious abuse"² against elder and dependent adults. (*Id.* at 31.) A plaintiff must show more than

24 _____
25 ² An example of such egregious conduct is a nursing facility that failed to provide an elderly
26 Parkinson's disease patient with sufficient food and water, left him in his own excrement for
27 prolonged periods of time, and failed to disclose his true condition to his children. *See Covenant*
28 *Care, Inc. v. Superior Court*, 32 Cal.4th 771, 783 (2004). Another example is a 78 year-old man that
was "abused, beaten, unlawfully restrained, and denied medical treatment." *See Smith v. Ben*
Bennett, Inc., 133 Cal.App.4th 1507, 1512 (2005).

1 just negligence, but the defendants engaged in reckless, oppressive, fraudulent, or malicious conduct.
2 (*Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 82.) Plaintiff does not plead facts to show the
3 elements of an elder abuse claim.

4 **XVIII. PLAINTIFF DOES NOT ALLEGE FACTS SHOWING A CONSPIRACY**

5 Plaintiff's conspiracy claim [16th COA] fails because there are no tort claims to support it.
6 "[C]onspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who,
7 although not actually committing a tort themselves, share with the immediate tortfeasors a common
8 plan or design." (*Applied Equip. Corp. v. Litton Saudi Arabia, Ltd.* (1994) 7 Cal.4th 503, 510-511; *see*
9 *also Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 76.) Conspiracy requires a viable underlying tort.
10 (See *Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, 12 ("No cause of action
11 exists for conspiracy itself; the pleaded facts must show something which, without the conspiracy,
12 would give rise to a cause of action.").)

13 Plaintiff's tort claims are defective because there is no underlying tort that could support the
14 conspiracy "claim." Further, Plaintiff merely concludes without providing any factual support that
15 Defendants engaged in a conspiracy. (FAC, ¶¶ 165-171.) But, Plaintiff fails to allege any facts
16 regarding the formation and operation of the purported conspiracy, the common design of the
17 conspiracy, or any overt act done in furtherance of the conspiracy that resulted in damage to them.
18 (See FAC.) Plaintiff, therefore, fail to meet the requisite elements to establish a conspiracy claim and
19 this claim thus fails and should be dismissed.

20 **XIX. THERE IS NO BASIS FOR INJUNCTIVE RELIEF**

21 Plaintiff's claim for injunctive relief [18th COA] fails because there is no basis to impose an
22 injunction. It is a remedy that is must be tethered to some independent legal duty owed by the
23 defendant to the plaintiff. (*McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1159; *Cox Commc'ns*
24 *PCS, L.P. v. City of San Marcos* (S.D.Cal.2002) 204 F.Supp.2d 1272, 1283.) The injunctive relief
25 claim, therefore, cannot stand on its own. As stated above, Plaintiff's other claims are defective.
26 Consequently, there is nothing to support Plaintiff's request for an injunction, and this claim, too,
27 should be dismissed.

1 **XX. CIVIL CODE § 2932.5 DOES NOT APPLY TO DEEDS OF TRUST**

2 Plaintiff's declaratory relief claim [19th COA] is based on purported violations of Civil Code §
3 2932.5. (FAC, ¶¶ 176-181.) Section 2932.5 does not apply to deeds of trust.

4 Civil Code § 2932.5 requires recordation of an assignment to change the person holding the
5 power of sale under a mortgage. Section 2932.5 does not apply to deeds of trust under which no
6 assignment needs to be recorded. (*Santens v. Los Angeles Fin. Co.* (1949) 91 Cal.App.2d 197, 201-
7 202.) Section 2932.5 does not apply to deeds of trust. (*Calvo v. HSBC Bank, USA, N.A.*, (2011) 199
8 Cal. App. 4th 118, 125.) The loan at issue in this case is secured by a deed of trust (RJN, Ex. 2), this
9 cause of action therefore fails as a matter of law.

10 **XXI. THE CIVIL CODE § 1632 CLAIM FAILS**

11 As a preliminary matter, Defendants were not parties to the original loan. However, even if
12 they were, the claim still fails.

13 First, Plaintiff's § 1632 claim is time barred. A cause of action "upon a statute for a penalty or
14 forfeiture" must be brought within one year. (Civ. Code §340(a).) Assuming their § 1632 claim is
15 premised on the purported failure to draft the loan documents in the appropriate language, such a claim
16 accrued in May 2006, over six years prior to the initiation of this lawsuit. Plaintiff's § 1632 claim is
17 thus barred by the statute of limitations. (See *Delino v. Platinum Community Bank* (S.D. Cal. 2009)
18 628 F.Supp.2d 1226, 1234 (citing California Civil Procedure Code Section 340 as providing
19 applicable statute of limitations for Section 1632 claim).)

20 Second, a translated contract only has to be provided if a party to the negotiations requests it.
21 (See *Reyes v. Household Finance Corp. of Cal.*, 118 Cal.App.3d 159, 161 (1981); see also 12 Witkin,
22 Summ. of Cal. Law, Real Property, §519(c).) Plaintiff does not allege she requested a copy of
23 translated loan documents, and since she was not a party to the loan transaction related to BONY's
24 loan, she had no standing to make such a demand even if she were involved in the loan origination,
25 which she was not.

26 Finally, § 1632 only provides for the remedy of rescission. (Civ. Code §1632(k).) If Plaintiff
27 were party to the loan at issue and had standing, she would only be entitled to rescission conditioned
28 upon her tender of the amounts due and owing under the loan. (*Plata v. Long Beach Mortg. Co.* (N.D.

1 Cal. 2005) 2005 WL 3417375, at *8.) Plaintiff has not alleged that the amounts due under the note
2 and deed of trust were tendered. For this and the reasons stated above, Plaintiff cannot state a § 1632
3 cause of action as a matter of law.

4 **XXII. CONCLUSION**

5 Plaintiff's FAC fails in its entirety. Plaintiff's FAC claims exceed the jurisdiction of the Court
6 while reviewing unlawful detainer matters. Even if the Court reviews the claims on the merits, each
7 one fails as a matter of law. Therefore, Defendants respectfully request that the Court sustain the
8 demurrer without leave to amend.

9
10 DATED: August 13, 2012

SEVERSON & WERSON
A Professional Corporation

11
12
13 By: 

Benjamin A. Eilenberg

14
15 Attorneys for Defendants EXECUTIVE TRUSTEE
16 SERVICES, LLC dba ETS SERVICES, LLC (erroneously
17 sued as ETS SERVICES, LLC) and THE BANK OF
18 NEW YORK MELLON TRUST COMPANY,
19 NATIONAL ASSOCIATION FKA THE BANK OF
20 NEW YORK TRUST COMPANY, N.A. AS
21 SUCCESSOR TO JPMORGAN CHASE BANK N.A. AS
22 TRUSTEE FOR RAAC 2006 SP3 (erroneously sued as
23 THE BANK OF NEW YORK MELLON TRUST
24 COMPANY)
25
26
27
28

1 **PROOF OF SERVICE**

2 At the time of service, I was over 18 years of age and not a party to this action. I am
3 employed in the County of Orange, State of California. My business address is The Atrium,
19100 Von Karman Avenue, Suite 700, Irvine, CA 92612.

4 On August 13, 2012, I served true copies of the following document(s):

5 **DEFENDANTS' DEMURRER TO PLAINTIFFS' "FIRST AMENDED VERIFIED**
6 **COMPLAINT FOR UNLAWFUL DETAINER AND DAMAGES AND FOR**
INJUNCTIVE RELIEF"

7 on the interested parties in this action as follows:

8 Albina Tikhonov
14713 Valleyheart Drive
9 Sherman Oaks, CA 91403


On Behalf of Plaintiffs
Attorney-in-Fact/POA

Telephone: (213) 422-6225

10 **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package
11 provided by The overnight service carrier and addressed to the persons at the addresses listed in
12 the Service List. I placed the envelope or package for collection and overnight delivery at an
13 office or a regularly utilized drop box of The overnight service carrier or delivered such
documents to a courier or driver authorized by The overnight service carrier to receive
documents.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed on August 13, 2012, at Irvine, California.

17 

18 Sabrina Gridley